IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITION NO.3415 OF 2000

Mohmed Usman Abdul Bari
lastly working as
Diesel Asistant,
Sholapur Division, Central
Railway, Sholapur (Maharashtra) ... Petitioner

V/s.

1. Union of India
through the General Manager
Central Railway, Headquarters
Office, Chatrapati Shivaji
Terminus, Bombay V.T.,
Mumbai-1

2. Chief Operating Manager
Central Railway,
Headquarters Office
Bombay V.T.,
Bombay - 1

3. Additional Divisional Railway
Manager, Central Railway
Sholapur Division, Sholapur,
Maharashtra

4. Divisional Mechanical Engineer
Central Railway, Sholapur
Division, Sholapur, Maharashtra ... Respondents

Mr.Saikumar Ramamurthy for Petitioner
Mr.Suresh Kumar for Respondent No.1

CORAM: **V.G. PALSHIKAR &**
SMT.NISHITA MHATRE, JJ.

DATED: **JANUARY 25, 2005**

ORAL JUDGMENT (PER SMT.NISHITA MHATRE, J.):

. By this judgment, the Petitioner challenges the order of the Central Administrative Tribunal dated

25.6.1999 in Original Application No.366 of 1995. The Tribunal has dismissed the Original Application filed by the Petitioner.

2. The Petitioner was appointed as a Class IV employee with the Railways. After successive promotions, he was promoted as a driver, grade C by an order of 8.10.1992. This order was issued on the directions of the Additional Divisional Railway Manager (ADRM). However, the order was signed on behalf of the Divisional Personnel Officer. A chargesheet was issued to the Petitioner by the Divisional Mechanical Engineer on account of a collision between the train which the Petitioner was driving and another which occurred on 16.2.1993 after a departmental enquiry was held, the Petitioner was removed from service by an order dated 7.3.1994. This order was issued by the Divisional Mechanical Engineer. Aggrieved by the penalty imposed, the Petitioner preferred appeal on 21.4.1994. This appeal was partly allowed by the appellate authority and the order of removal was substituted by an order of reversion to the grade of Diesel Assistant. The Chief Operating Manager, Central Railways issued a memorandum on 7.11.1994 calling upon the Petitioner to show cause as to why action in accordance with Rule 25(1) of the Railway Service (Discipline and Appeal) Rules 1968 should not be taken. It was proposed by an order of

13.3.1995 to revise the penalty imposed of reversion to one of removal from service. An appeal filed by the Petitioner against this order of revision was rejected by the General Manager (Central Railways) on 24.7.1996.

3. The Petitioner, therefore, preferred Original Application No.366 of 1995 before the Central Administrative Tribunal. One of the contentions before the Central Administrative Tribunal was that the order of removal was passed by an authority which was lower in rank than the appointing authority of the Petitioner. According to the Petitioner , his appointing authority was the Additional Divisional Railway Manager (ADRM), Solapur and, therefore, the order of removal issued by the Senior Divisional Mechanical Engineer (Power) removing him from service was without jurisdiction. The Petitioner contends that only an authority who was in the same rank as that of the appointing authority or in a high rank could have issued the order of removal. It is, therefore, claimed that all orders subsequent to the order of removal are without jurisdiction. On merits, the Petitioner claims that the appellate authority after considering the enquiry report and the order passed by the disciplinary authority has rightly reduced the punishment of reversion to the grade of Rs.950-1500. The Petitioner denied that the accident had occurred on account of his negligence and submitted that it was by

reason of a mechanical failure that the collision occurred.

3. The Central Administrative Tribunal has rejected the Original Application by concluding that the Disciplinary Authority was not lower than the appointing authority as claimed by the Petitioner. The Tribunal found that the order promoting the Petitioner as an Engine Driver was issued by the Divisional Personnel Officer who was of equivalent rank to the Disciplinary Authority and, therefore, the order of removal was passed within the jurisdiction and of the Disciplinary Authority.

4. Mr.Ramamurthy, appearing for the Petitioner, submits that the order promoting the Petitioner to the post of Engine Driver though issued in the name of the Department of the Divisional Personnel Officer was in fact an order issued by the Additional Divisional Railway Manager and, therefore, he was the appointing authority. According to the learned Advocate, the Divisional Personnel Officer had no authority to issue an order of appointment in the mechanical department and, therefore, he could never have been his appointing authority. The learned Advocate, therefore, submits that the appointing authority being the Additional

Divisional Railway Manager, it was only he or a person holding an equivalent rank or a higher rank, who could have issued the order of removal. It is also submitted by Mr.Ramamurthy that the criminal case which was filed against the Petitioner has ended in an acquittal and therefore, in view of the judgment in the case of *Capt. M.Paul Anthony v/s. Bharat Gold Mines Ltd.,* **AIR 1999 SC 1416**, the Petitioner is entitled to be reinstated in service with all consequential benefits.

5. There is no dispute that the order promoting the Petitioner to the post of Driver, grade C dated 8.10.1992 was issued by the Additional Divisional Railway Manager. It was signed on behalf of the Divisional Personnel Officer. The Petitioner was working in the mechanical section and, therefore, obviously, the order which was issued by the Divisional Personnel Officer was on the directions of Additional Divisional Railway Manager. In these circumstances, the Tribunal has erroneously concluded that the appointing authority was the Divisional Personnel Officer and not the Additional Divisional Railway Manager. Consequently, either the Additional Divisional Railway Manager or an officer equivalent in rank being the Disciplinary Authority ought to have issued the order of penalty. The order of removal issued by the Senior Divisional Mechanical Engineer who is subordinate to the

Additional Divisional Railway Manager cannot be sustained.

6. The Tribunal after considering this issue has not considered the merits of the case at all. It could not have decided the Original Application in such a manner without touching upon the merits of the action taken by the railway authorities. The Tribunal ought to have considered whether the Petitioner had committed any misconduct and if so, whether it warranted the punishment that had been imposed on him. Since this has not been done, we are of the view that the matter will have to be remanded for the Tribunal to hear the Petitioner afresh on merits of the case. While doing so, the Tribunal will also bear in mind the fact that the Petitioner has been acquitted in the criminal trial which was held on the identical set of facts on which the departmental proceedings were taken against the Petitioner. The Tribunal will then have to consider the issue in the light of the judgment of the Apex Court in the case of *Paul Anthony (supra).*

7. Writ Petition is disposed of in the above terms. No order as to costs.